REMARKS

The allowance of claim 19 and the objection to claims 3-5, 8-12 and 15-17 as containing patentable subject matter is noted with appreciation.

The present invention is a portable device which, in a preferred application, is a portable communications device. In accordance with an embodiment of the invention, a portable device 2 includes a housing 20 having a first surface 202 with an outlet 27 for egress of an acoustical signal when in a loudspeaker mode and a second surface 201 with an outlet 35 for egress of an acoustic signal when in an earpiece mode; an electroacoustic transducer 28 located within the housing for converting an electrical signal input to the transducer into an acoustical signal, the transducer being operable to output acoustical signals while in the loudspeaker mode or the earpiece mode, an acoustical path which conducts sound waves between the transducer and the outlet for the egress of an acoustic signal when in the loudspeaker mode being less attenuated than an acoustic audio path which conducts sound waves between the transducer and the outlet for the egress of an acoustic signal when in the earpiece mode. See paragraph [0020] – [00021] of the Substitute Specification. Moreover, the present invention affords an advantage in that when the user places the earpiece outlet 25 to their ear while the device is in a loudspeaker, the output will be quieter than from the loudspeaker outlet in view of the aforementioned attenuation in the acoustic path of sound waves between the transducer 28 and the outlet 25 used for the earpiece mode. See paragraph [0004] of the Substitute Specification.

Claims 1, 6-7 and 18 stand rejected under 35 USC §103 as being unpatentable WO-97/47117 (Hawker et al.) in view of U.S. Patent No. 6,292,563 (Clark et al.). These grounds of rejection are traversed for the following reasons.

Independent claims 1, 7 and 18 substantively recite an acoustical audio path which conducts an acoustical signal as sound waves between the transducer and the outlet for the egress of an acoustic signal when in the loudspeaker mode being less attenuated than an acoustical audio path which conducts sound waves between the transducer and the outlet for the egress of an acoustic signal when in the earpiece mode. This subject matter has no counterpart in Hawker et al., alone or combination with Clark et al.

The Examiner's definition of the word "attenuation" is improper in the context of the aforementioned subject matter which clearly recites an acoustical audio path which conducts an acoustical signal as sound waves which are being attenuated. The Examiner's construction that attenuation is broadly interpreted to mean volume control can not be applied the claimed attenuation of an acoustic signal as sound waves in the audio path.

Hawker et al., clearly teaches at the bottom of page 6 and the top of page 7 that the audio amplifier provides an increase in signal level to raise the level of audio sufficiently to allow the user to hear the calling party when holding the terminal well away from the ear. It is therefore seen that the adjustment of audio level is by applying a different degree of electrical gain to permit loud speaker and earpiece modes and not by the claimed attenuation of an acoustical signal as sound waves in the acoustical audio path. The electronics, including the amplifier, are not the claimed acoustical audio path conducting an acoustical signal as sound waves between the transducer and the outlet. The amplifier can not be argued to perform attenuations since the amplifier is an active device which enhances signal level in the electrical path between the amplifier and the transducer with attentuation being the opposite effect of reducing magnitude.

The Examiner's reliance upon Clark is misplaced. The Examiner states that Clark teaches a volume attenuator for flip-style hand held phones that increases/decreases the speaker volume to change as the flip-phone is opened and closed with the Examiner citing column 2, lines 3-9. However, Clark et al., like Hawker et al., vary the amplified electrical signal in dependence upon the position of a hinge 19 so as to control the volume of the speaker 12. This does not read upon the claimed attenuation of an acoustical signal as sound waves in an acoustical audio path.

In summary, it is submitted that the Examiner's construction of Hawker et al., and Clark et al., is premised upon an unduly broad reading of the word "attenuate" to mean volume control. Such construction is too broad in that it can only be properly read upon volume control of an electrical signal which is different than the claimed recitation of an acoustical audio path which conducts an acoustical signal as sound waves which are attentuated.

Claim 6 is patentable for the same reason set forth above.

Claims 2 and 14 stand rejected under 35 USC §103 as being unpatentable over Hawker et al., in view of U.S. Patent No. 5,379,338 (Umemoto). Umemoto has been cited as teaching an attenuator in column 18, lines 1-15. However, the existence of an attenuator does not suggest the subject matter of the claims involving attenuation in the acoustical audio path of an acoustical signal as sound waves as recited in claims 2 and 14.

In view of the foregoing amendments and remarks, it is submitted that each of the claims in the application is in condition for allowance. Accordingly, early allowance thereof is respectfully requested.

Applicants request any shortage or excess in fees in connection with the filing of this paper, including extension of time fees, and for which no other form of payment is offered, be charged or credited to Deposit Account No. 01-2135 (Case: 1156.39104X00).

Respectfully submitted,
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June 8, 2005